



# Board of Adjustment Minutes

## July 11, 2019

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**Members Serving:**

David Nail, Chairman  
Steve McGlothlin, Vice Chairman  
John Robertson  
Mitch Abraham  
Mark Brady

**Also, Present:**

Rawls Howard, Director  
Craig Culberson, Senior Planner  
Jackie Thompson, Administrative Specialist  
Becca Bleich, Zoning Administrator

**Not Serving:**

Rosalind Campbell  
Jeremy Katz  
Danny Martin

**Absent:**

Alan Johnson

Mr. Nail called the meeting to order at 6:25 P.M.

- 1.) Approval of the minutes from the June 13, 2019 Board of Adjustment meeting.

**ACTION: A motion by Mr. Brady, seconded by Mr. Robertson to approve the minutes. The motion was unanimously approved.**

**6:33 Public Hearing opened**

- 2.) Consider **APPEAL OF ADMINISTRATIVE DECISION** requests from the Ella Graham Family Limited Partnership be continued to August 8, 2019 BOA meeting.

**ACTION: A motion by Mr. Brady, seconded by Mr. Robertson to continue the case until August 8, 2019. The motion was voted yes by Mr. McGlothlin, Mr. Brady and Mr. Robertson with Mr. Abraham voting no. Vote was 3 to 1.**

**6:35 Public Hearing opened**

- 3.) Consider **APPEAL OF ADMINISTRATIVE DECISION** requests from Your Self Storage, LLC be continued to August 8, 2019.

**ACTION: A motion by Mr. Brady, seconded by Mr. Robertson to continue the case until August 8, 2019. The motion was voted yes by Mr. McGlothlin, Mr. Brady and Mr. Robertson with Mr. Abraham voting no. Vote was 3 to 1.**

**6:36 Public Hearing opened**

- 4.) Consider **APPEAL OF ADMINISTRATIVE DECISION** requests from the Alexander Place Shoppes, LLC. be continued to August 8, 2019.

**ACTION: A motion by Mr. Brady, seconded by Mr. Robertson to continue the case until August 8, 2019. The motion was voted yes by Mr. McGlothlin, Mr. Brady and Mr. Robertson with Mr. Abraham voting no. Vote was 3 to 1.**

**6:37 Public Hearing opened**

- 5.) Consider **APPEAL OF ADMINISTRATIVE DECISION** requests from the Highway 21 & Highway 150 be continued to August 8, 2019.

**ACTION: A motion by Mr. Brady, seconded by Mr. McGlothlin to continue the case until August 8, 2019. The motion was unanimously approved.**

- 6.) Rawls Howard and Becca Bleich were sworn in.

- 7.) Consider a **VARIANCE** request from Jose Arriaga. The property is located on Leonard Street, further referenced by Iredell County Tax Map PIN 4666188273.000. The request is in reference to setbacks.

Becca Bleich: The applicant and owner in this case is Jose Arriaga. The request before you tonight is for relief from Section 5.4.2 (5) (B) and (F). the property is zoned RMX under the Town of Mooresville. The property has limited side yard.

Section 5.4.2 (5) (B) requires that accessory structures over 144 sq. ft. meet the minimum side yard setback. The side setback for this property is 15 ft. One post of the accessory structure is located on the property and the other is two feet off the line. Section 5.4.2 (5) (F) requires accessory structures be located a minimum of 5 ft. from the principal structure. The accessory structure is 2 ft from the principal structure.

In a variance case, the findings of fact must be answered in the affirmative:

1. There are practical difficulties or unnecessary hardships in application of the Ordinance requirements; and
2. Any Practical difficulties or unnecessary hardships are not the result of the actions of the applicant;
3. The reasons set forth in the application justify the granting of a Variance, and that the Variance is the minimum action that will make possible the reasonable use of land or structures; and
4. The Variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit; and
5. In the granting of the Variance, the public safety and welfare have been assured and substantial justice has been done.

The Board can:

1. Approve the request based on affirmative findings of fact
2. Approve the request with reasonable conditions
3. Deny the request

Note: if any of the findings are voted in the negative, the request must be denied

Kim McDonald and Jose Arriaga were sworn in. Kim McDonald wishes to translate for Jose Arriaga.

Jose Arriaga: I built the garage for my mother-in-law who is old so we can park and not be in the rain and ice.

Kim McDonald: When Jose got the inspection is when he realized that he was in violation and that is why he is asking for a Variance. Jose received permission from his neighbor to be so close.

Mr. Abraham: Did you get a permit from the Town & County before you started building with the setbacks?

Jose Arriaga: Yes sir.

Kim McDonald: translated

Jose Arriaga: No sir.

Mr. Abraham: Does not see how we can continue if the permit was not issued correctly.

Mr. Howard: We should have a copy of the permit. Typically on permit we put setbacks.

Mr. Abraham: The applicant is to draw where the structure is going. So staff should have told him what he can do and can't do.

Mr. Howard: Handed out copy of permit as exhibit. Said attachments are required for application.

Mr. Abraham: The permit shows the requirements and the building was still built in setbacks. Then asked if the only handicap accessible entrance to the house was on the side near the carport.

Kim McDonald: The side door goes into the kitchen but there is a front door that has a step up. There is no entrance on the back side.

Mr. Nail: How far is left side of car port from neighbor's property?

Miss Bleich: One post is on the line and one is two feet away. They could have room if the structure was smaller.

Mr. Howard: There is a 144 square foot threshold. Because of its size it must conform to the 15-foot setback. If it was smaller, it could be 5 feet.

Mr. Robertson: If the variance is granted, will it be attached to the deed?

Miss Bleich: Correct but conditions could be added.

Mr. Robertson: The neighbor's property will not be included and will have to deal with the carport when they go to sell, which could hinder the sale.

\*inaudible chattering\*

Mr. Robertson: Is the structure was over the property line?

Miss Bleich: It is on the line, not encroaching on the neighbor.

Mr. Abraham: If it was encroaching on the neighbor's property line, the potential buyer could refuse to purchase.

Mr. Howard: What was submitted for the building permit is not what is on the ground.

Mr. Nail: Are there any other questions?

Mr. Robertson: If the variance isn't granted, could they modify the structure to be compliant?

Miss Bleich: It could be modified but would have to be compliant.

Mr. Howard: They would have to cut the structure down tot meet the setback and spacing requirement. A variance would still have to be granted for the spacing if the board did not want to make them move it or the structure can be attached to the house, which would have to be compliant with the Zoning Ordinance.

Mr. Nail: Anything else from the Board?

Rose Salazar from Cornelius was sworn in.

Ms. Salazar: If the neighbor sold/give part of her property to the applicant, would that help? Is there some way the neighbor can help the applicant keep the structure where it is?

Mr. Howard: Selling part of the property will create a nonconformity on the neighbor's property. The Town can't authorize an encroachment without going through the variance process again. Larger lots could allow for this to be possible.

William Thomas, 494 Barber Loop, was sworn in.

Mr. Thomas: I have concerns because owns property on Leonard St. It is a habitat community with low income families. This is the fist structure like that on this street. I'm concerned that if this goes through the precedent that it could set. It's a tight community with cars parked along the street. There isn't adequate parking. The structure will allow the Arriaga family to get their vehicles off the street, which is great, but I'm concerned about the precedent it will set. The precedent of people building structures similar that aren't to code or is makeshift. Thank you for listening.

Mr. Nail: Anyone else wish to speak?

Mr. Abraham: If tabled, would they have to pay the fee again?

Miss Bleich: No

Mr. Abraham: Can the overhang impede into the setback?

Mr. Howard: We allow overhangs in the setback.

Mr. Abraham: So there would be a way to reconfigure the structure and leave the overhang?

Mr. Howard: Staff always tries to look for options. The applicant has a large backyard. The structure could be moved to the back. Staff will work with applicant to make it compliant. This is a more attractive option than demolishing it.

Mr. Brady: How did we know the structure was on the line?

Mr. Howard: Iredell County Building Inspectors went to the property to inspect the structure for the building permit.

Mr. Brady: Inaudible

Mr. Howard: The inspectors make an interpretation of the property line. The math can be backed into through looking at the adjacent house. Inspectors let us know if they see something of concern which is when we inspected. Driveways are allowed in the setback up to the property lines.

Mr. Brady: Is the driveway to the line?

Mr. Howard: Probably

Mr. Brady: The concrete driveway and the sidewalk don't look like they're on the property line

Mr. Howard: The Board can request a survey.

\*inaudible chattering\*

Mr. Robertson: T brought it up on google. It looks like the fence runs a foot toward the neighbors house. GIS shows the corner of the neighbor's house being over the property line.

Mr. Howard: That is not survey quality.

Mr. Nail: Anyone else with to speak? Finding of fact?

Mr. Howard: There has to be a 4 out of 5 votes for approval on all of the questions for the variance to pass.

**ACTION: A motion by Mr. Brady, seconded by Ms. Campbell to close the Public Hearing. The motion was unanimously approved.**

**Findings of Fact #1: A vote of 2 yes (Mr. McGlothlin, Mr. Nail) and 3 no (Mr. Robertson, Mr. Abraham and Mr. Brady) to the Findings of Fact.**

**Findings of Fact #2: All voting no to the Findings of Fact.**

**Findings of Fact #3: All voting no to the Findings of Fact.**

**Findings of Fact #4: All voting no to the Findings of Fact.**

**Findings of Fact #5: A vote of 2 yes (Mr. Brady and Mr. Nail) and 3 no (Mr. Robertson, Mr. Abraham & Mr. McGlothlin)**

**ACTION: A motion to deny the request by Mr. Nail, seconded by Mr. McGlothlin.**

**ACTION: A motion by Mr. Brady, seconded by Mr. Abraham, to adjourn the July 11, 2019 Board of Adjustment meeting. The motion was unanimously approved.**

The meeting adjourned at 7:20 P.M.